IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

UNITED STATES OF AMERICA Plaintiff, v. NEXTIRAONE, LLC d/b/a BLACK BOX NETWORK SERVICES, and REPORT INVESTMENT CORPORATION, Defendants.	Civil Action No. _____

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

STATEMENT OF THE CASE

1. This is a civil action instituted pursuant to Section 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. § 9622, against NextiraOne LLC and Report Investment Corp. ("Defendants") to, inter alia, enforce two CERCLA Administrative Orders on Consent, CERCLA Docket Nos. 92-29-C and 92-05-C ("AOCs") that require Defendants to reimburse costs EPA incurred in overseeing cleanup activities at property owned and operated by Report Investment within the city of Miami, Florida. That property is located on the north and south sides of the 3600 block of 76th Street in Miami, and is known as the Anaconda

Aluminum Co./Milgo Electronics Corporation National Priorities List Site ("Site"). Under the first AOC, Defendants agreed to be bound "jointly and severally liable with the Anaconda Respondents" for the performance of a joint Remedial Investigation/ Feasibility Study ("RI/FS") work plan (hereafter the "Milgo RI/FS AOC") (Attachment 1). Under the second AOC, Defendants agreed to perform certain removal activities on a portion of the Site (hereafter the "Milgo Removal AOC") (Attachment 2). Defendants agreed to reimburse EPA for oversight costs incurred with respect to the Site under both AOCs.

JURISDICTION AND VENUE

2. This Court has exclusive original jurisdiction over this action pursuant to Section 113(b) of CERCLA, 42 U.S.C. §§ 9613(b), because this is a controversy arising under CERCLA.

3. The Court also has original jurisdiction of this matter under 28 U.S.C. §§ 1331 and 1345 because this is a civil action commenced by the United States that arises under the laws of the United States.

4. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, in this district.

DEFENDANTS

5. NextiraOne LLC is a Delaware Corporation doing business as Black Box Network Services. It is an indirect, wholly-owned subsidiary of Black Box Corporation, a Delaware corporation with offices is Lawrence, Pennsylvania. NextiraOne LLC is the successor-in-interest to Racal-Datacom, Inc., which voluntarily

entered into the AOCs in 1992.

6. Report Investment Corp. is a Florida corporation with its principal place of business in Ft. Lauderdale, Florida. It is the owner of the Milgo property, and voluntarily entered into the AOCs in 1992.

STATUTORY BACKGROUND

7. Under Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), the President is authorized to act to arrange for the removal of hazardous substances, pollutants, and contaminants released into the environment or to take any other response measure deemed necessary to protect the public health, welfare, or environment. In addition, under Section 104(b) of CERCLA, 42 U.S.C. § 9604(b), the President is authorized "to undertake investigations, monitoring, surveys, testing and other information gathering activities he deems necessary or appropriate to identify the existence and extent of the release ... , the source and nature of the hazardous substances ... involved, and the extent of danger to the public health or welfare or to the environment." Further, under Section 104(b), 42 U.S.C. § 9604(b), the President "may under take such planning, legal, fiscal, economic, engineering, architectural, and other studies or investigations as he may deem necessary or appropriate to plan and direct response actions, to recover the costs thereof, and to enforce the provisions of this chapter."

8. Pursuant to Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), response actions, including removals, remedial investigations and feasibility studies, may be carried out by owners or operators of facilities or any other responsible party in accordance with Section 122 of CERCLA when the President

determines that such action will be done properly and promptly. Under Section 104(a) of CERCLA, 42 U.S.C. § 9604(a), the President may authorize responsible parties to perform remedial investigations and feasibility studies ("RI/FS") "only if the President contracts with or arranges for a qualified person to assist the President in overseeing and reviewing the conduct of such RI/FS and if the responsible party agrees to reimburse the Fund for any cost incurred by the President under, or in connection with, the oversight contract or arrangement."

8. Under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), the President, when it is determined that there may be an imminent and substantial endangerment to the public health, welfare, or the environment because of an actual or threatened release of a hazardous substance from a facility, may, inter alia, issue such orders as may be necessary to protect public health and welfare and the environment.

9. Under Section 122(a) of CERCLA, 42 U.S.C. § 9622(a), the President is authorized, in his discretion, to enter into agreements with any person, including responsible parties, to perform any response action if the President determines that such action will be done properly by that person.

10. Under Section 122(d)(3) of CERCLA, 42 U.S.C. § 9622(d)(3), "[w]henever the President enters into an agreement under this section with any potentially responsible party with respect to action under section 9604(b) of this title, the President shall issue an order or enter into a decree setting forth the obligations of such party. The United States district court for the district in which the release or threatened release occurs may enforce such order or decree."

11. The President's authority under Sections 104, 106 and 122 of CERCLA relevant to this action was delegated to the Administrator of EPA by Executive Order No. 12580, 52 Fed. Reg. 2926 (January 23, 1987), and further delegated to Regional Administrators by EPA Delegation No. 14-14-C (September 13, 1987). The authority was further re-delegated to the Superfund Division Director by EPA Delegation No. R6-14-14-C (June 8, 2001).

THE ANACONDA/ MILGO SUPERFUND SITE

12. The Site consists of two parcels of land approximately three acres in size, divided by a street that runs through the Site. The parcel on the north side of the street is the Milgo property and the property to the south side of the street is referred to as the Anaconda property.

13. Over an almost twenty-year period, from 1966 until 1984, Milgo Electronics conducted electroplating, manufacturing, painting, and packaging operations on the Milgo property. Wastewater from chemical rinses, metal plating, and spray coating was treated on-site in a treatment system. During this process contaminated wastewater tainted the surrounding property and seeped into the Biscayne Water Aquifer. Racal-Datacom, Inc. was the successor-in-interest to Milgo Electronics Corporation. Report Investment Corporation has owned the property since 1966 and is the current owner of the property.

14. In 1987, EPA performed an Expanded Site Investigation which revealed the presence of chromium and lead in the soil and groundwater. These metals were detected in the groundwater at levels that exceeded Florida and EPA drinking water standards.

15. The Site overlies the Biscayne Aquifer, a water table

system that has received sole source designation from the EPA. The depth to groundwater is approximately 4-6 feet below ground level.

16. The Site was listed on the EPA's National Priority List, as defined in Section 105 of CERCLA, 42 U.S.C. § 9605.

THE ADMINISTRATIVE ORDERS ON CONSENT

17. Defendants entered into the Milgo RI/FS AOC on July 31, 1992, with EPA Region 4 pursuant to Sections 104, 122(a), and 122(d)(3) of CERCLA, 42 U.S.C. §§ 9604, 9622(a), and 9622(d)(3). Under the terms of the Milgo RI/FS AOC, Defendants agreed to develop an RI/FS of source areas on the Milgo Property and, jointly with two other responsible parties, of groundwater contamination at the Site.

18. Pursuant to Section XVII of the Milgo RI/FS AOC, Defendants agreed to reimburse the Hazardous Substance Superfund for all oversight costs to be incurred by EPA, as follows, in pertinent part:

> Respondents agree to reimburse the Hazardous Substance Superfund for all response and oversight costs incurred by EPA or its representatives in oversight of Respondents' performance of work under the Consent Order. . .
>
> Respondents shall, within thirty (30) calendar days of receipt of each accounting, remit a certified or cashiers check for the amount of those costs made payable to the Hazardous Substance Superfund. Interest shall begin to accrue on the unpaid balance from that date. . .

19. Pursuant to Section XVII of the Milgo RI/FS AOC, oversight costs include:

> all direct and indirect costs of EPA's oversight arrangement for the RI/FS, including, but not limited to, time and travel costs of EPA personnel and associated indirect costs, contractor costs, compliance monitoring, including the collection and analysis of split samples, inspection of RI/FS activities site visits, interpretation of Consent Order provisions, discussions regarding disputes that may

arise as a result of this Consent Order, review and approval or disapproval of reports, the costs of redoing any of Respondents' tasks, and any assessed interest.

20. Pursuant to Section XVIII of the Milgo RI/FS AOC, Defendants agreed to reimburse the Hazardous Substance Superfund for EPA's past costs of response, as follows, in pertinent part:

> Respondents agree to pay past costs incurred by EPA and its authorized representatives as set forth herein. Respondents shall within thirty (30) calendar days of the effective date of this Consent Order, remit a certified or cashiers check for the amount of $100,000 made payable to the Hazardous Substance Superfund in partial payment of EPA's past costs.

21. Defendants entered into the Milgo Removal AOC on November 19, 1992, with EPA Region 4 pursuant to Sections 104, 106 and 122 of CERCLA, 42 U.S.C. §§ 9604, 9606, and 9622. Under the terms of the Milgo Removal AOC, Defendants agreed to complete a preliminary investigation of the Milgo property to define the nature and extent of soil contamination there, control the source of existing releases and threatened releases at or from the Milgo property, and arrange for treatment, transportation and disposal of hazardous wastes at an approved facility.

22. Pursuant to Section VI(V) of the Milgo Removal AOC, entitled "Reimbursement of Oversight Costs," Defendants agreed to reimburse EPA for oversight costs to be incurred:

> Respondents acknowledge that EPA will incur costs at the Site in connection with this Consent Order. Respondents shall fully reimburse EPA for such costs not inconsistent with the National Contingency Plan after receipt of EPA's written demand for payment, which demand shall include EPA's certified Agency Financial Management System summary data ... or such other summary or account as certified by EPA. . . [P]ayment shall be made within thirty (30) days of receipt of EPA's written demand by certified or cashiers check ....

CLAIM FOR RELIEF
ENFORCEMENT OF AOCS

23. The allegations of Paragraphs 1 through 22 are re-alleged and incorporated herein by reference.

24. Although the Milgo RI/FS AOC obligated Defendants to pay $100,000 of EPA's past costs, Defendants paid only $50,000 in past costs to EPA. Defendants failed to reimburse the United States for the remaining $50,000 in past costs by August 5, 1992, as required by Section XVII of the Milgo RI/FS AOC, and have failed or refused to reimburse the United States that amount to date.

25. In performing the Anaconda/Milgo Superfund Site response action, EPA incurred substantial oversight costs, including contractor costs, EPA payroll and travel costs, and indirect costs.

26. On September 30, 1999, EPA sent Defendants an accounting of the unpaid response and oversight costs EPA incurred at the Site and demanded payment of these costs. Defendants did not dispute their obligations, and failed to reimburse the United States for such costs as required by Section XVII of the Milgo RI/FS AOC and Section VI(V) of the Milgo Removal AOC, and have failed to reimburse the United States to date.

27. On August 15, 2001, and again on February 28, 2002, EPA demanded payment of its costs under the AOCs. Defendants did not dispute their obligations, and failed to reimburse the United States for such costs as required by Section XVII of the Milgo RI/FS AOC and Section VI(V) of the Milgo Removal AOC, and have failed to reimburse the United States to date.

28. EPA incurred unreimbursed costs in the amount of $532,687.48 (including interest) through January 22, 2001, while overseeing the performance of work under the AOCs. EPA has incurred additional costs from January 22, 2001 to the present,

which Defendants must pay under the AOCs. Defendants have failed to reimburse EPA for these costs.

29. Pursuant to Section 122(d)(3) of CERCLA, 42 U.S.C. § 9622(d)(3), and the terms of the AOCs, the United States is entitled to reimbursement from Defendants of oversight costs incurred under the AOCs in the amount of approximately $532,687.48 (including interest) through January 22, 2001, and oversight costs incurred (including interest) from that date to the present.

30. Pursuant to Section XVII of the Milgo RI/FS AOC, the United States is entitled to interest on all such unreimbursed oversight costs from October 30, 1999, through the date of payment.

31. Pursuant to Section XVIII of the Milgo RI/FS AOC, the United States is entitled to an additional $50,000 in past costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that this Court:

1. Enter an order compelling the Defendants, jointly and severally, to pay the United States all unreimbursed oversight costs, past costs and interest owed under the AOCs, and prejudgment interest;

2. Award the United States its costs of this action; and

3. Grant such other and further relief as the Court deems just and proper.

ELLEN M. MAHAN
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044
Phone (202) 307-1242
Fax (202) 514-2583

PATRICIA HURST
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Washington, DC 20044
Phone (202) 307-1242
Fax (202) 514-2583

R. ALEXANDER ACOSTA
United States Attorney for the
Southern District of Florida

ANN MARIE ST. PETER GRIFFITH
Assistant United States Attorney
Southern District of Florida
99 N.E. 4th Street
Miami, Fl. 33132
Phone (305) 961-9001
Fax (305) 530-7679

OF COUNSEL:

NADINE ORRELL
Associate Regional Counsel
U.S. Environmental Protection Agency
Region 4
61 Forsyth Street SW
Atlanta, GA 30303

DATED: March __, 2007